

Thursday, 19 September 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

Paper No. 422 - Application on behalf
of the Prosecution under Rule 6(b)(1) pertain-
ing to IPS Document No. 58.

Paper No. 423 - Application on behalf
of the Prosecution under Rule 6(b)(1) pertain-
ing to IPS Document Nos. 2457, 2527 and others.

Paper No. 438 - Request that Order
(Paper No. 297) be amended.

Paper No. 439 - Request for production
of Witness, Lt. Colonel Ichiji SUGITA.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

Antoinette Duda
Official Court Reporter
IMTFE

Appearances:

For the Prosecution Section:

MR. GROVER C. HARDIN
MR. CARLISLE W. HIGGINS
MR. EUGENE WILLIAMS
MR. S. HORWITZ
GENERAL S. A. GOLUNSKY
COLONEL S. J. ROSENBLIT
MAJOR A. A. PASHKOVSKY
MR. A. V. KUNIN

For the Defense Section:

MR. WILLIAM LOGAN, JR., Counsel for the
Accused KIDO, Koichi
MR. JOSEPH G. HOWARD, Counsel for the
Accused KIMURA, Heitaro
MR. GEORGE A. FURNESS, Counsel for the
Accused SHIGEMITSU, Mamoru
LT. COMMANDER E. R. HARRIS, USNR, Counsel
for the Accused HASHIMOTO, Kingoro,
and the Accused SHIMADA, Shigetaro

For the Office of the General Secretary, IMTFE

EDWARD H. DELL, Judge
Legal Adviser to the Secretariat
MR. C. A. MANTZ, Clerk of the Court
MR. H. W. DELANEY, Deputy Clerk of
the Court

The proceeding was begun at 0900.

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THE PRESIDENT: This is Paper 438, a request that an order, being Paper No. 297, be amended. The request is by the defense. It is asking for the substitution of the name of Lieutenant Bernard A. Hargadon in place of that of Lieutenant Commander E. R. Harris, USNR.

The application is granted.

MR. MANTZ: Pardon me, sir. It is in addition to Harris, and not in place of him.

THE PRESIDENT: Oh, "by adding." Yes. Thank you. The application is granted.

The second is a request for the production of a witness on behalf of the accused KIMURA, Heitaro. The witness desired is Lieutenant Colonel SUGITA.

Is there any opposition by the prosecution?

MR. WILLIAMS: No opposition by the prosecution, Mr. President.

THE PRESIDENT: Well, the necessary factor stated here is evidence that he is a relevant witness; relevant and material.

MR. LOGAN: Mr. Howard, your Honor, has another. He would like to amend that.

MR. HOWARD: My Japanese co-counsel yesterday handed me these names, here, who were mentioned by the witness who testified yesterday a number of times.

And I believe it is apparent from the record that their testimony would be relevant. He would like to include them in the order.

THE PRESIDENT: You ask that the request be amended by the inclusion of the names of Major General SAITO, Masatoshi, and Lieutenant Colonel BANNO, Hiroteru. They are both now at Singapore.

On what will they give evidence?

MR. HOWARD: Concerning the prisoners of war. They were in charge of prisoner-of-war camps.

THE PRESIDENT: Do you really know on what points they can give evidence?

MR. HOWARD: No, we have not had a chance to talk to them. It is possible that my Japanese co-counsel could give us more information on that.

THE PRESIDENT: I think in the case of SUGITA, also, you should be able to state just what evidence he can give, and not make any assumptions. He may be a witness against you.

MR. HOWARD: Of course, that is possible. But my Japanese co-counsel went to Sugamo to see him and he had departed just three or four days before; so, actually, we do not know what any of them would testify.

THE PRESIDENT: Before granting this

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THE PRESIDENT: Before granting this

application I think that I should give you an opportunity to interrogate these proposed witnesses to see whether it is worthwhile the defense calling them. They may be hostile or neutral. It does not follow that because they were named by Colonel Wild that they are going to give evidence for the defense if they are called. That may be just an assumption, of course.

MR. HOWARD: The reason we wanted to get them at this time, sir, is that it is possible that they will go on trial in the next day or two and they would not be available; and, we being in trial every day, we won't have an opportunity to talk to them in Singapore until after the prosecution has closed its case.

THE PRESIDENT: Well, that is another matter that I must consider. I may do something which would relate to the postponement of the trial or perhaps to the infliction of punishment under false assumption that they could give evidence on behalf of the defense. I do not think I should make this order today, but I should give you an opportunity to administer interrogatories to these people to discover what they know, or to get a proof of their evidence independently of any interrogatory.

I have discussed this matter of witnesses

with some, at all events, of my colleagues, and they seem to be of the opinion that we should now more closely follow what is being done in Germany, and insist upon the defendants not merely indicating the names of the witnesses and pointing out that they are mentioned in the proceedings, but also upon a statement of the evidence that the witness will be able to give if called.

MR. FURNESS: That, of course, discloses our case.

THE PRESIDENT: It does in Germany, I know that. It is a most unusual procedure, but it is done with a view to avoid perhaps calling a hundred or even a thousand witnesses at the last minute and at great expense, of course, to the government.

MR. FURNESS: Well, in this type of trial it is even more objectionable procedure.

THE PRESIDENT: I understand that in Germany they do not insist on a very full statement of what the witness can say, but they want to be satisfied, at all events, that he will be able to say something that is relevant and material.

MR. FURNESS: I am quite certain that SUGITA and SAITO, having had command of the Malay Prisoner of War Administration, would testify to relevant material,

whether they testify in our favor or not.

THE PRESIDENT: You could not say, you have no alternative to say.

MR. FURNESS: Certainly it would be relevant material.

MR. LOGAN: That was just the point I was going to make, your Honor, that you have a witness on the stand who has mentioned these names. It isn't like our coming in asking for a subpoena for somebody whom the Court has never heard of. But here we have three witnesses who have been mentioned frequently by the present witness and who are directly involved in the events concerning which he testified.

Now, I do not think it is important at this time to determine whether or not these witnesses would testify in favor of defense or not. After all, we are entitled to have the full story told. And if these were men who were never mentioned before that would be something different. But I think where you have three witnesses directly mentioned by the prosecution, and frequently, then I think we should be entitled to subpoena with respect to them at this time.

THE PRESIDENT: I do not think the test is whether the witness can give relevant and material

whether they testify in our favor or not.

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THE PRESIDENT: I do not think the test is whether the witness can give relevant and material

evidence, whether for the prosecution or the defense.

MR. LOGAN: Well, isn't that set up in the Charter, your Honor?

THE PRESIDENT: No. Goering could have called Churchill. He would be a relevant witness, but not for the defense. That is what we must avoid.

MR. FURNESS: It seems likely if they would testify for the prosecution, the prosecution would call them as witnesses.

THE PRESIDENT: Well, then, we will let the prosecution say whom they want to call.

MR. FURNESS: It is the presumption that the testimony would not be favorable to the prosecution.

MR. WILLIAMS: The presumption is the testimony would be cumulative and, therefore, we do not want to put it in.

THE PRESIDENT: There is the trouble in Germany of getting witnesses to the trials, the question of transport. Those are difficulties which probably apply here.

MR. LOGAN: There is the additional point in respect to these witnesses that if they are tried and convicted and sentenced to be shot or hung we have lost the opportunity of having them here. It has already happened to one of our witnesses.

THE PRESIDENT: It is like an application to stay the proceedings.

MR. LOGAN: Or stay the sentence of execution.

MR. FURNESS: For instance, the order issued on SAKI. He has already been hanged.

THE PRESIDENT: Who is he?

MR. FURNESS: He is one that Major Blakeney wanted to call and for whom the Court issued an order. We read in the paper a day or so ago that he had just been hanged.

THE PRESIDENT: That is so. He was hanged in China.

MR. FURNESS: I spoke to one of prosecution, asking whether we could get Colonel SUGITA back, and he said, "Well, you might bring back the pieces."

THE PRESIDENT: Well, the frank purpose of this is to prevent SUGITA's being dispatched. You can only speculate on his value to you.

MR. HOWARD: To prevent his being dispatched until we have time to find out whether he will testify. That is the main purpose now.

THE PRESIDENT: Of course, you do not need him now, and won't need him for some weeks.

MR. HOWARD: No. But it won't take many weeks to dispatch him.

THE PRESIDENT: I am afraid unless you could say that you wanted him to give evidence for you and that he could give that evidence, the people responsible for the trial and for the carrying out of the punishment would not be impressed.

MR. HOWARD: It is possible that after talking with my **Japanese** co-counsel, they can definitely say as to what he would testify to, give me more details about that.

THE PRESIDENT: Well, I will adjourn the application with a view to getting further particulars. I will take it when you are ready, and I will take it on short notice.

The next application is on behalf of the prosecution under Rule 6(b)(1) pertaining to Document No. 58. It is "**Papers Relating to the Foreign Relations of the United States - Japan, 1931-1941.**"

Well, is there any contest about this?

MR. LOGAN: If your Honor please, that is a book written in English -- rather, two volumes, and the items of which the prosecution desires to obtain excerpts are contained in 105 documents contained in that book. They consist of various messages which passed between American Consul, Japanese Consul, Secretary Hull to the Japanese Ambassador and memoranda

issued by Secretary Hull, press releases, and so forth. I have examined all of those 105 documents contained in that, and we would like to have additional excerpts of some of them. In some instances they consist of a few lines, in some they consist of the entire document, and in other instances we do not desire any additional excerpts. Now, in order to understand it properly it would require considerable time to put on the record the exact additional excerpts that we wish and also those which we do not desire.

THE PRESIDENT: Have you tried to come to an agreement about the additional matter?

MR. LOGAN: No. Mr. Hardin, of the prosecution, has been very helpful to me. He loaned me his copies of the books, which had excerpts marked quite distinctly, and I went over them and I have written down each one of these papers, which was a tremendous job. I have not had an opportunity to go over these with him, but I think it might be advisable to put it on the record so it would be known just what excerpts we desire.

MR. WILLIAMS: May I speak to the President on that subject?

My understanding is that if we offer any part of any document, the Court will as of course permit the defense to offer any additional part which relates

to the subject matter in part.

THE PRESIDENT: It is all in evidence.

MR. WILLIAMS: But that does not require us to process the additional matter for them and offer it as a part of our case.

THE PRESIDENT: That is right.

MR. WILLIAMS: Under the circumstances, it seems to me the correct procedure is for them to determine for themselves what if any parts they want to process, and offer that in evidence at the proper time.

THE PRESIDENT: It would save us a lot of trouble if, when the defense acquires some additional matter, you can see your way to agree.

MR. WILLIAMS: We would be happy to agree on specifications, but the difficulty lies in this matter: We are processing hundreds and hundreds of thousands of pages of matter all the time. It sounds like a very easy thing to add a sentence here or add a line there. But it requires the reprocessing of an entire document, for no purpose of the prosecution's.

THE PRESIDENT: No. Well, I have had no case yet where it required that. After all, the Supreme Commander Allied Powers is doing a lot, isn't he, and he might as well do it all at the same time if it can

be done.

MR. WILLIAMS: The point I have is this. We have no objection to cooperating with the defense in getting these matters done in proper cases; but in cases where it throws our entire processing unit out of gear it causes a lot of trouble.

THE PRESIDENT: It has not happened yet, has it?

MR. WILLIAMS: It has not happened yet, but it might if some such thing as suggested by Mr. Logan is ordered. And my suggestion is, if it please you, that we try to work the thing out in a spirit of cooperation with the defense counsel, but that it not be made a part of an order where we should be forced to process a lot of material.

THE PRESIDENT: Well, I wouldn't, except in case of a dispute; but I am hoping there is no dispute.

MR. LOGAN: Apparently Mr. Williams is overlooking the fact that under the rules that exist at the present time we should be provided with both Japanese and English copies of the entire document, and there is an application for relaxation of that rule, and we have had many, many of these motions heretofore; and I think the defense have been quite cooperative in only asking for excerpts, additional excerpts, and

not the entire document. I mean, this argument has been up before, as your Honor knows.

THE PRESIDENT: Yes, I know.

MR. LOGAN: I might say, if I thought anything like Mr. Williams suggested, I wouldn't spend night after night going over these documents, eliminating anything that is not material and just asking for a few lines. I think that is the least the prosecution can give us.

MR. HARDIN: Does Mr. Logan have an idea just what this amounts to, from what he has done?

MR. LOGAN: I do not know. As I say, in some documents, no additional request; in others a few lines; and in others a few paragraphs; and I would say, oh, half a dozen or ten, at the most, where we require the entire document.

MR. FURNESS: Isn't it a fact that the prosecution's production of these documents is thrown out of gear because they go ahead reproducing them before they get exception of the rule from the Court?

MR. LOGAN: That is probably the answer to that, yes.

MR. WILLIAMS: And in view of the length of time it takes to get one of these applications to a hearing, if we did not go ahead we would have to ask

for recesses of the Court because our document production would not keep ahead with us.

MR. FURNESS: But you are assuming the Court will rule in your favor.

MR. WILLIAMS: We assume the Court will rule in our favor because our requests have been reasonable.

MR. LOGAN: No, I think that is an assumption on your part. The Court has assisted us in these previous applications and granted all our requests for additional excerpts.

THE PRESIDENT: The difficulty is, Mr. Williams, if you refuse and the Court refuses, they will still be at liberty to have all this material prepared at the expense of SCAP later on.

MR. WILLIAMS: We are not worrying about the question of expense, Sir William. We are worried about the matter of time involved in this.

THE PRESIDENT: Time in putting the prosecution's case?

MR. WILLIAMS: Yes.

THE PRESIDENT: Time saved in that way will be lost in putting the defense's case later on in seeking this material.

MR. HARDIN: There are just two points: If Mr. Higgins and Mr. Williams agree, I do not mind

making an agreement with Mr. Logan. But straight to the point, this new stuff is not part of our case, and they will have much more time and opportunity to process these additional things than we would have.

THE PRESIDENT: But a reasonable agreement now would save time eventually for both sides; and not only time, but labor and expense. So I do urge you to endeavor to agree on this additional material if you can.

MR. HARDIN: Well, I will work with Mr. Logan in an endeavor to make an agreement.

THE PRESIDENT: I will adjourn further consideration of that matter until I see the parties again.

Now, the next application is also by the prosecution under the same rule in respect of their documents 2457 and 2527, and other documents.

MR. LOGAN: I might say with respect to this, your Honor, that all the documents mentioned in this application have not yet been filed in the Clerk's office, and some of them were only filed as recently as day before yesterday. Japanese counsel and myself have examined those which have been filed. I suggest an adjournment of this for about a week.

THE PRESIDENT: Well, we can deal with those that have been filed and filed early enough to give you the seven days to peruse them.

MR. LOGAN: I might say, with respect to some of them the excerpts are not marked, and in other instances the original document from which the excerpt was taken has not been filed. But if your Honor wishes me to, I will gladly set forth the ones I have already perused.

THE PRESIDENT: I do not want to hold up the prosecution in respect of those documents where they have given the necessary notice. If you can single those out I will deal with them right away.

MR. LOGAN: Well, the first one is 2457. We would like to have all of that document, which consists of $3\frac{1}{2}$ additional pages. It is a speech by Baron SHIDEHARA.

THE PRESIDENT: At present they propose only one paragraph.

MR. LOGAN: That is right.

THE PRESIDENT: You want $3\frac{1}{2}$ pages. What do you say to that, Mr. Hardin?

MR. WILLIAMS: General Golunsky is handling that.

GENERAL GOLUNSKY: What does Mr. Logan want?

THE PRESIDENT: They want $3\frac{1}{2}$ pages instead of one paragraph.

GENERAL GOLUNSKY: That is what it is, actually,

the whole speech.

THE PRESIDENT: Well, you have no objection to that?

GENERAL GOLUNSKY: No.

MR. LOGAN: 2527, we do not desire any additional excerpt.

2367, we request the submission of the English translation.

GENERAL GOLUNSKY: I don't hear you.

MR. LOGAN: I am sorry. We would like to have the entire English translation of that entire document.

GENERAL GOLUNSKY: Which one?

MR. LOGAN: 2367.

GENERAL GOLUNSKY: 2367. You want the whole thing?

MR. LOGAN: Yes, please.

GENERAL GOLUNSKY: All right.

THE PRESIDENT: That is agreed to.

MR. LOGAN: 2368, no additional excerpt required.

1955, no additional ones required.

2459 is not filed. The documents are not filed.

1987, no additional ones on that.

2302, no additional ones required there.

2330, the whole of page 52 and the first line of page 53 should be given.

GENERAL GOLUNSKY: 2330?

MR. LOGAN: 2330. In other words, if that was left out the import of the report would not be correctly interpreted.

2549--

THE PRESIDENT: You agree on 2330?

MR. LOGAN: I just mentioned 2330.

THE PRESIDENT: You want more than they are offering.

MR. LOGAN: Yes. I said the whole of page 52 and the first line of page 53.

THE PRESIDENT: Do you agree to that, General?

GENERAL GOLUNSKY: Well, as far as I can see there are in all forty pages in this document. How can there be a page 52?

MR. LOGAN: Well, as I understand your own document, when you say about forty pages, that means the entire English document. Now, the page 52 might be the Japanese copy or copy in some other language. I don't know. I imagine it is the Japanese copy, because this is a request from Japanese counsel.

THE PRESIDENT: Well, I will have to adjourn

this now until a quarter past one today.

In the meantime, General, you might endeavor to agree with the defense on that matter.

GENERAL GOLUNSKY: All right.

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(Whereupon, at 0930, an adjournment was taken until 1315, the same day.)

AFTERNOON SESSION

The proceeding was resumed at 1315.

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MR. LOGAN: On this motion, Judge, I thought I had better put this on the record.

With respect to documents 4121, 2527, 2368, 1955, 1987, 2302, 1086, 1628, 1754, no excerpts are requested.

Prosecution and defense have agreed on the following:

Document 2457, the entire speech, about 3½ pages.

Document 2461, entire speech.

Document 2528, entire text of SHIGEMITSU's speech.

Document 2524, one line which was left out of the excerpt.

Document 1217, entire speech.

There is a disagreement with respect to the following documents:

First, Document 2549. That is at the bottom of page 1, your Honor. That is a complete book, secret report of Lieutenant Colonel SUZUKI which he made on his inspection tour in Manchuria. It is about 100 pages long. While we would like to have the entire book, if your Honor decides against this, why, that will be all right.

THE PRESIDENT: Well, I know nothing as to the merits of the disagreement.

GENERAL GOLUNSKY: May I say something about this document?

THE PRESIDENT: Yes.

GENERAL GOLUNSKY: I wish to state the reason why I object to having the whole book processed.

It is a very lengthy report of Colonel SUZUKI of his inspection tour in Manchuria, full of military technical details which are, in our opinion, of no value to the Tribunal. The part which is the general conclusions is being processed. But the rest of it, dealing with separate regions he has visited and also military technical details he reports of the War Ministry, we do not think very important.

MR. LOGAN: We do not press it particularly, your Honor.

THE PRESIDENT: Yes. Well, in view of what the General said, I do not think I will order it.

MR. LOGAN: Document 2330. We would like the whole of page 52 and the first line of page 53. The prosecution objects to that. That is to be found in the second from the last, on the first page. That is a book on the "Draft Measures on the Construction of the Greater East Asia," published in April 1943 by the

Committee for the Investigation of the East Asia
Problems of Kokusaku Kenkyu Kai Society.

THE PRESIDENT: And how much more do you want?

MR. LOGAN: One page and one line.

GENERAL GOLUNSKY: We do not very much press
our objection to this document; only the part they want
now has nothing whatever to do with our phase of the
case. It deals with Hawaii, I think, and India, and
some other things which have nothing whatever to do
with our part of the case.

THE PRESIDENT: This may be helpful on some
other part.

MR. LOGAN: Helpful to the defense.

THE PRESIDENT: Yes.

GENERAL GOLUNSKY: All right, we will not
object.

MR. LOGAN: With respect to Document 2367,
that is the file of the newspaper "Kokumin Shimbun"
for August 1941. It is the third one on the first page,
your Honor.

Japanese co-counsel have examined that, and
they have given me a detailed reasoning why they want
that, and I would like to read it into the record.
It refers to a talk concerning genuine domestic affairs.

(Reading) "1. General ARAKI commented that

Japan should have deployed a common front with the other Allied countries of World War I against Russian infringement of the International Agreement. He regretted the fact that Japan, on the contrary, adopted an over-cautious and timid attitude toward this matter, and dispatched troops to Siberia under such name as assisting Chechoslovakia.

"2. General ARAKI regretted in those days the easy-going attitude of the Japanese, who, being too indifferent to the death-defying combat in Europe, were indulged in seeking after an undue profit arising from the war. The General admonished that unless Japan endeavor to develop her fortune by the unity of the people, she will be ruined.

"The partial translation of the article fails to convey the basic principle of the talks; and, moreover, the part pointed out by the prosecutor as evidence is not exactly translated in such a way, and we are fearful that it might mislead the Court to the wrong conclusion."

THE PRESIDENT: How much is involved, how much extra?

MR. LOGAN: I believe it is about fifty pages.

GENERAL GOLUNSKY: Yes.

MR. LOGAN: And the Japanese counsel urgently

requested that it be translated and submitted to us.

GENERAL GOLUNSKY: Mr. President, it is a very lengthy interview dealing with different matters. We do agree to furnish to the defense all the part of this interview which has any relation to the subject of the Siberian expedition; not only those paragraphs which we are going to read into the record, but the whole part of the interview dealing with the Siberian expedition. But he talks there about the condition in Japan and all such sort of things. We do not think it necessary to introduce all those fifty pages, having there things which have absolutely nothing to do--

THE PRESIDENT: Just to show his general attitude. It is on the lines of the picture, is it?

GENERAL GOLUNSKY: Well, in general, of course, everything he said has some sort of interest to the Tribunal. But it has nothing whatever to do with this phase of the trial.

MR. LOGAN: We will be able to use it on the defense.

THE PRESIDENT: I think so. But I wouldn't order it. I wouldn't order fifty pages on that. A matter of that sort is purely general.

MR. LOGAN: More or less.

THE PRESIDENT: It indicates his particular

attitude to the world, generally. I think I will let the defense bring that out if they find they need it, at the right time. I wouldn't order that unless the matter is material.

MR. LOGAN: With respect to Documents 2459, 1753, 4122, 2627, 13, 1622, 2402, 1621, all of those on page 3 of the motion papers with the exception of 1217, and 2419, none of the documents referred to -- all these numbers I have just quoted -- have been filed with the Clerk's office yet, so we have been unable to do anything about them.

THE PRESIDENT: Well, I will make the order with the additions agreed upon, that are not objected to.

MR. LOGAN: How about those last ones I have just read, your Honor?

THE PRESIDENT: Well, of course, you have not had a chance to peruse them.

GENERAL GOLUNSKY: I think we can arrive at an understanding about those.

THE PRESIDENT: I will make an order for the additions agreed upon, to which there is no objection.

MR. LOGAN: Thank you.

(Whereupon, at 1330, the proceeding was concluded.)

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